

Meeting Date:	December 18, 2007	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Facilities Development & Operations		

Motion and Title: Staff recommends motion to approve: a Concessionaire Service Agreement with Dania Pier Management, Inc., for operation of the pier concession and bait shop located in Juno Beach Park.

A portion of the premises is located on submerged lands leased from the State of Florida, pursuant to Sovereignty and Submerged Lands Lease No. 502637596 (R2002-0674), as amended (R2007-1543) (State Lease). The operation of the concession is subject to the terms and conditions of the State Lease, as amended.

Attachments:

1. Location Map
2. Concessionaire Service Agreement
3. Disclosure of Beneficial Interests
4. Letter from Juno Pier Management
5. Staff's response letter

Recommended By: Anthony Wolf 11/28/07
Department Director Date

Approved By: Robert J. [Signature] 12/1/08
County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures					
Operating Costs	10,500	10,500	10,500	10,500	
External Revenues	<33,750>	<46,350>	<48,204>	<12,168>	
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<23,250>	<35,850>	<37,704>	<1,668>	
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget: Yes X No

Budget Account No: Fund 0001 Dept 580 Unit 5111-03 Revenue Source 4729-09
Fund 0001 Dept 580 Unit 5110 Object Code 4401

B. Recommended Sources of Funds/Summary of Fiscal Impact:

External Revenue: \$3,750.00 per month rent/income effective January 1, 2008, for three (3) year term with annual increase of four percent (4%).

Operating Costs: Include payments to the State for: i) the current annual lease fee of \$4,605 (adjusted annually); and ii) a supplemental lease fee estimated at \$5,895

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

Jim Dool 12-5-07
OFMB WD CN
12/5/07 12/3/11

Jim J. Jacoby 12/11/07
Contract Development and Control
12/10/07

B. Legal Sufficiency:

James Brink 12/13/07
Assistant County Attorney

This Contract complies with our
contract review requirements.

PREM will obtain a
Certificate of Insurance
prior to commencement of
services.

C. Other Department Review:

Donna E. Miller
Department Director

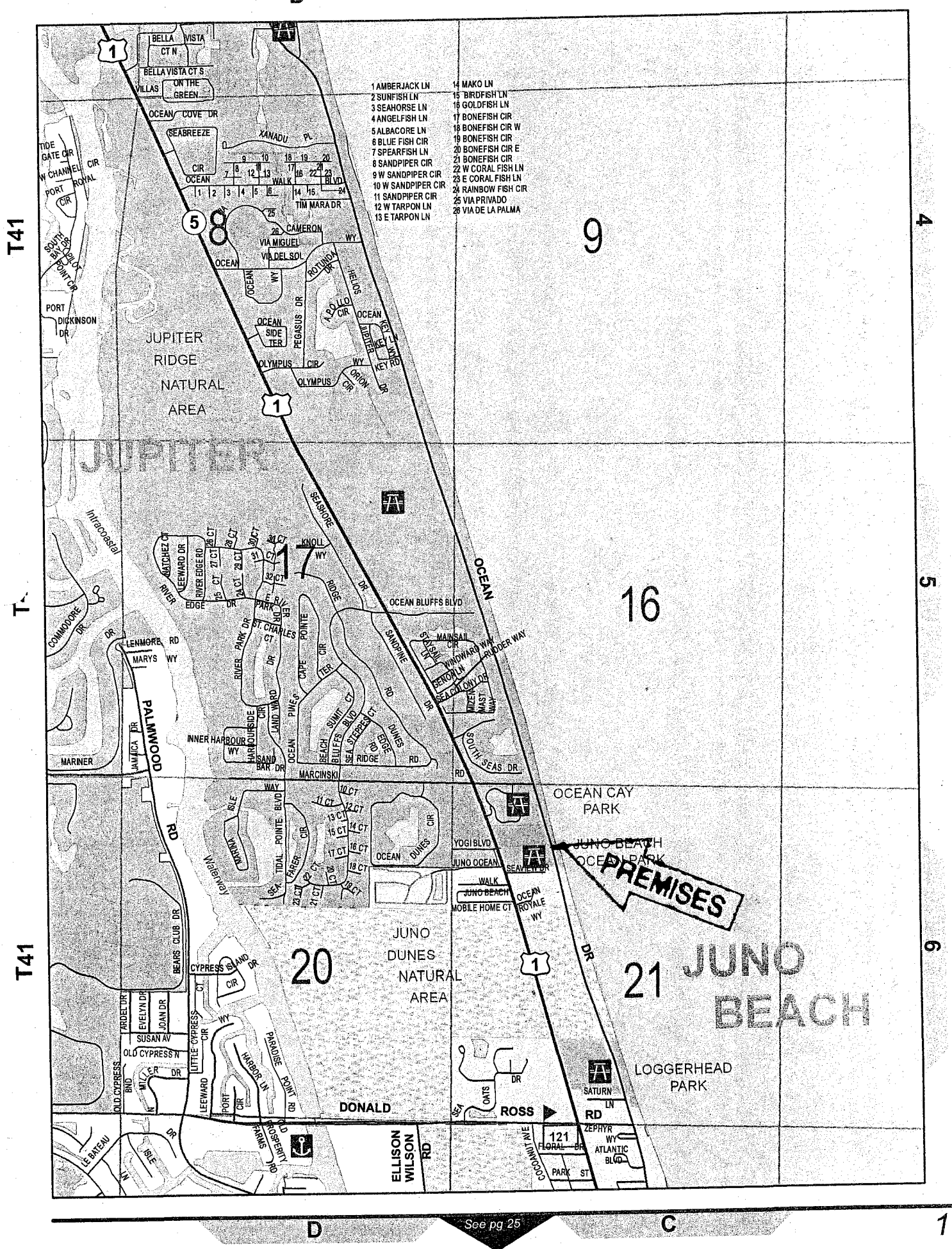
This summary is not to be used as a basis for payment.

Background and Justification - continued

The term of the State Lease, as amended, expires on April 2, 2012. Pursuant to the State Lease, the County shall pay to the State annually: (i) a lease fee of \$4,604.51 plus sales tax and (ii) a supplemental lease fee when six percent (6%) of the gross revenue derived directly or indirectly from the use of the submerged lands exceeds the annual lease fee. The annual lease fee shall be adjusted for the remaining years of the Lease pursuant to the provisions of Section §18-21.011, Florida Administrative Code, which currently provides for an annual increase or decrease on March 1 of each year based on the average change in the CPI as calculated by averaging the CPI over the previous 5 year period, with an annual cap of no more than a ten percent (10%) increase. The State Lease requires that a Gross Income Report is submitted to the State annually in order for the State to determine whether the six percent (6%) supplemental lease fee is due which is currently estimated at \$5,895.

Dania Pier Management has provided a Disclosure of Beneficial Interests, attached as Attachment 3. The Disclosure identifies Thomas Zannucci and Donald V. Streeter as each holding a 50% interest in Dania Pier Management.

Juno Pier Management, the other respondent, submitted a letter requesting that the Board consider what Juno Pier Management believes to be pertinent information to be considered in awarding the Concessionaire Services Agreement. A copy of the letter from Juno Pier Management is attached as Attachment 4. The Selection Committee reviewed the letter and continues to support its recommendation for Dania Pier Management. A copy of PREM's response to Juno Pier Management is attached as Attachment 5.



LOCATION MAP

ATTACHMENT # 1

CONCESSIONAIRE SERVICE AGREEMENT

THIS CONCESSIONAIRE SERVICE AGREEMENT, hereinafter referred to as "Agreement" is made and entered into _____, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County" and DANIA PIER MGT, a CORPORATION, (type of entity) (EIN: # 65-0572838); hereinafter referred to as "Concessionaire".

WITNESSETH:

WHEREAS, County is the owner of certain real property and the lessee of certain submerged lands, including the improvements located thereon, as more specifically described hereinafter and as depicted in Exhibit "A" (the "Premises") which Concessionaire desires to use for operation of a concession; and

WHEREAS, Concessionaire has demonstrated experience suitable for the management and operation of a fishing pier concession; and

WHEREAS, Concessionaire was selected through the competitive proposal process to use such Premises and improvements for such purposes; and

WHEREAS, Concessionaire has indicated a willingness and demonstrated the ability to properly finance, operate, and manage said activities in accordance with the terms of this Agreement; and

WHEREAS, County is willing to allow the Premises and improvements to be used by Concessionaire for the use set forth herein.

NOW THEREFORE, in consideration of the rents, covenants and agreements hereinafter reserved and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I BASIC AGREEMENT PROVISIONS

Section 1.01 Premises

In consideration of the rents, covenants and agreements hereafter reserved and contained on the part of the Concessionaire to be observed and performed, the County provides to the Concessionaire, and Concessionaire accepts from County, the concession area depicted as the Premises. The Premises are located at Juno Beach Park, 14775 S.R. A1A, Juno Beach, FL 33408 (the "Park").

County reserves the right to make such amendments, changes and revisions to the configuration of the Premises as County, in its sole discretion, may deem proper. Construction may at times impact the operation or maintenance of this concession. The County, at its option, reserves the right to relocate Concessionaire into another space of similar square footage. In the event that Concessionaire does not agree to the relocation as provided herein, this Agreement shall be automatically terminated and the parties hereto shall be relieved of all further obligations hereunder; County shall not be liable to Concessionaire for any damages of any kind whatsoever.

Section 1.02 Submerged Lands Lease

A portion of the Premises is located on submerged lands leased by the County from the State of Florida (the "State") pursuant to Sovereignty Submerged Lands Lease No. 502637596 (R2002 0674), as amended, attached hereto as Exhibit "G" and made a part hereof (the "Submerged Lands Lease"). It is anticipated that the Submerged Lands Lease will be renewed and its terms amended prior to the commencement of the Term as set forth in Section 1.04 of the

Agreement. The operation of the concession shall be subject to the terms and conditions of the Submerged Lands Lease, as same may be amended, including but not limited to, the specific stipulations of Condition 30, Special Lease Conditions, of the Submerged Lands Lease.

Section 1.03 Parking

Vehicle parking at the Park is designated exclusively for visitors participating in recreational activities based at/from the site, as well as Park and Concession staff, on a first come, first served basis. Concessionaire shall utilize the existing parking lot on the west side of A1A directly across from the Juno Beach Park fishing pier (the "Pier") for deliveries and parking. The operation and maintenance of the parking lot and associated restroom facility shall remain the responsibility of the Palm Beach County Parks and Recreation Department (the "Department").

Section 1.04 Length of Term and Commencement Date

The term of this Agreement shall commence (the "Commencement Date") on January 1, 2008, and shall extend for a period of three (3) years thereafter (the "Term") unless sooner terminated pursuant to the provisions of this Agreement.

Section 1.05 Option to Renew

County hereby grants to Concessionaire, provided Concessionaire is not then in default of this Agreement, the right and option to renew the Term of this Agreement for three (3) successive period(s) of one (1) year each under the same terms and conditions of this Agreement and commencing upon the expiration of the initial Term of this Agreement or any renewal thereof. Concessionaire shall exercise its option to renew, if at all, by written notice to the County received by the County no sooner than one hundred fifty (150) days but no later than ninety (90) days prior to the expiration of the initial Term of this Agreement or any renewal thereof. Failure of Concessionaire to duly and timely exercise its option to renew the Term of this Agreement shall be deemed a waiver of Concessionaire's right to said renewal option and all further renewal options.

Section 1.06 Excuse of County's Performance

Anything in this Agreement to the contrary notwithstanding, the County shall not be deemed in default with respect to failure to perform any of the terms, covenants and conditions of this Agreement if such failure to perform shall be due to any strike, lockout, civil commotion, war-like operation, natural disaster, invasion, rebellion, military power, sabotage, government regulations or controls over which County has no amendatory powers, inability to obtain any material, utilities, service or financing, through Acts of God or other cause beyond the reasonable control of the County.

Section 1.07 Customer Service

Concessionaire shall place a sign provided by the Department in a location on the Premises designated by County, stating:

This business occupies space owned by County. If any customer cannot resolve any customer complaint with the business owner, they may forward the details of their complaint, in writing, to: Palm Beach County Parks & Recreation Department, Attention: Manager, Support Services, John Prince Park, 2700 Sixth Avenue South, Lake Worth, FL 33461.

Concessionaire shall work diligently to resolve customer complaints regarding service or other issues.

Section 1.08 Amount of Deposit

Concessionaire, simultaneously with its execution of this Agreement, has deposited with the County the sum of One Thousand Dollars (\$1,000.00) as security for the full, faithful and timely performance of each and every term, covenant and condition to be performed by Concessionaire under this Agreement (the "Security Deposit"). The Security Deposit may be commingled with other funds of County, and County shall have no liability for the accrual or

payment of any interest thereon. In the event of the failure of Concessionaire to keep and perform any of the terms, covenants and conditions of this Agreement to be kept and performed by Concessionaire, then the County, at its option, may appropriate and apply said Security Deposit, or so much thereof as County may deem necessary, to compensate the County for all loss or damage sustained or suffered by County due to such default or failure on the part of Concessionaire. In no event shall the amount of said Security Deposit be deemed to limit Concessionaire's liability under this Agreement. Should any portion of the Security Deposit be so appropriated and applied by County, then Concessionaire shall, upon the demand of County, forthwith remit to County a sufficient amount in cash to restore said Security Deposit to the original sum deposited, and Concessionaire's failure to do so within five (5) days after receipt of such demand shall constitute a default of this Agreement. Should Concessionaire comply with all of the terms, covenants and conditions of this Agreement and promptly pay all of the Guaranteed Annual Rent and Additional Rent herein provided for as it becomes due, and all other sums payable by Concessionaire to County hereunder, the said Security Deposit shall be returned in full to Concessionaire within thirty (30) days of the expiration of this Agreement, or upon the earlier termination hereof.

ARTICLE II RENT

Section 2.01 Guaranteed Annual Rent

Concessionaire shall pay to the County Guaranteed Annual Rent during the term of this Agreement in equal monthly installments, together with all applicable sales taxes thereon, on the first day of each month, in advance, without any prior demand therefore or any deduction, holdback or setoff whatsoever. The initial amount of Guaranteed Annual Rent is \$ 45,000.⁰⁰. Any Guaranteed Annual Rent payment hereunder for any fractional month shall be calculated and paid on a per diem basis using a 30-day month. Guaranteed Annual Rent and Additional Rent shall be made payable to the Palm Beach County Board of County Commissioners and shall be delivered to the Palm Beach County Parks & Recreation Department, Revenue Section, 2700 Sixth Avenue South, Lake Worth, FL 33461.

Section 2.02 Adjustment to Guaranteed Annual Rent

On each anniversary date of this Agreement or any extension thereof, the Guaranteed Annual Rent shall be adjusted by multiplying the then current Guaranteed Annual Rent by one hundred and four percent (104%).

Section 2.03 Additional Rent

Any and all sums of money or charges required to be paid by Concessionaire under this Agreement other than the Guaranteed Annual Rent shall be considered "Additional Rent", whether or not the same is specifically so designated and County shall have the same rights to enforce due and timely payment by Concessionaire of all Additional Rent as are available to County with regard to Guaranteed Annual Rent.

Section 2.04 Sales, Use and Rent, Taxes, Assessments, Ad Valorem, Non Ad Valorem Real and Personal Property Taxes

Concessionaire shall pay all sales, use or rent taxes assessed by any governmental authority against the Guaranteed Annual Rent and/or Additional Rent, if any, even if such tax is intended to be imposed against County. Concessionaire shall pay before delinquency all ad valorem and non-ad valorem taxes and assessments, whether general or special and all tangible or intangible personal property taxes and assessments of any kind or nature which may be levied by any governmental authority against the Premises, Concessionaire's interest in the Premises, Concessionaire's Alterations or personal property located on the Premises.

Section 2.05 Unpaid Fees, Holdover

In the event Concessionaire fails to make timely payment of any rentals, fees, charges, and payments due and payable in accordance with the terms of this Agreement within ten (10) days after same shall become due and payable, interest at the rate established from time to time by the

Board of County Commissioners [currently set at eleven percent (11 %) per year] shall accrue against the delinquent payment(s) from the date due until the date payment is received by County. Such interest shall constitute Additional Rent. Notwithstanding the foregoing, County shall not be prevented from terminating this Agreement for default in the payment of rentals, fees, charges, and payments due to County pursuant to this Agreement or from enforcing any other provisions contained herein or implied by law. In the event Concessionaire shall holdover, refuse or fail to relinquish possession of the Premises at the expiration or termination of this Agreement, Concessionaire shall be strictly liable to pay to County during the entire period of such holdover, double Guaranteed Annual Rent, as provided for in Chapter 83.06, Florida Statutes. In addition to the Guaranteed Annual Rent, Concessionaire shall pay all other charges or costs imposed upon Concessionaire by this Agreement, all cost of insurance for which Concessionaire would have been responsible if this Agreement had been renewed on the same terms contained herein, and all sales taxes assessed against such increased Guaranteed Annual Rent. Such tenancy shall be subject to all the other conditions, provisions and obligations of this Agreement.

Section 2.06 Accord and Satisfaction

In the event Concessionaire pays any amount that is less than the amount stipulated to be paid under this Agreement, such payment shall be considered to be made only on account of the stipulated amount. No endorsement or statement on any check or letter shall be deemed an accord and satisfaction. The County may accept any check or payment without prejudice to County's right to recover the balance due or to pursue any other remedy available to County pursuant to this Agreement or under the law.

Section 2.07 Right to Charge Admission to Fishing Pier

The Concessionaire shall submit to the Department a schedule of maximum admission fees for all operating hours and seasons for both adult and youth fishing patrons and adult and youth spectators. Schedule shall include a multi-use type booklet which will allow a reduced fee based on frequency of use. In connection with such charges, the Concessionaire shall maintain admission gates to control the flow of patrons onto the Pier. The Concessionaire shall be permitted to adjust admission fees according to the season with prior written approval from the Department. Fee adjustment requests must be received by the Department at least thirty (30) days prior to the date of desired implementation and shall not exceed the approved maximum fees for the facility.

Admission fee increases shall be submitted by the Concessionaire to the Department for written approval no less than sixty (60) days prior to implementation. Notwithstanding the preceding, the Department shall have the right to assure that all fees and charges shall be similar to and competitive with other fishing pier fees within the surrounding area.

ARTICLE III CONDITION OF PREMISES, ALTERATIONS

Section 3.01 Acceptance of Premises by Concessionaire

Concessionaire certifies that Concessionaire has inspected the Premises and accepts same "As Is", in its existing condition, together with all defects, latent or patent, if any, and subject to all easements, encumbrances, restrictions and matters of record. Concessionaire further acknowledges that the County has made no warranties or representations of any nature whatsoever regarding the Premises including, without limitation, any relating to the physical condition of the Premises or any improvements or equipment located thereon, or the suitability of the Premises or any improvements for Concessionaire's intended use of the Premises. No repair work, alterations, or remodeling of the Premises is required to be done by County as a condition of this Agreement. Concessionaire agrees to perform any and all work at its own cost and expense which is necessary to fully equip and maintain the Premises for the lawful use of the Premises by Concessionaire as specified in Section 4.01 of this Agreement, unless the work is the responsibility of the County as specifically provided for in Section 6.01 of this Agreement.

Section 3.02 Concessionaire's Alterations

Concessionaire shall be solely responsible for any and all improvements, repairs, alterations or other work necessary to render the Premises suitable for Concessionaire's intended use. Prior to commencing any work within the Premises, Concessionaire shall furnish to the Department for written and discretionary approval, plans and specifications showing a layout, fixture plan, interior finish, store front and any work, equipment or fixtures to be done or installed by Concessionaire within the Premises ("Alterations"). All fixtures installed by Concessionaire shall be new or completely reconditioned. All work performed to the Premises, whether pursuant to this Section or otherwise, shall be performed and accomplished solely for the benefit of Concessionaire, and not for the benefit of County, such work being nevertheless subject to each and every provision of this Agreement. Department's approval of the plans and specifications submitted by Concessionaire in conjunction with Concessionaire's Alterations may, at Department's sole option, be contingent upon the receipt by the Department of a surety company payment and performance bond obtained by Concessionaire at its sole cost and expense. Said bond shall be issued by a surety company satisfactory to County, insuring completion of Concessionaire's Alterations free and clear of all liens, encumbrances, chattel mortgages, conditional bills of sale and other title retention or security agreements or other charges, all in accordance with the plans and specifications approved by the Department. Concessionaire shall design and construct such Alterations at Concessionaire's sole cost and expense, in accordance with the requirements of this Agreement and in full compliance with applicable governmental laws, rules, orders, building codes and zoning regulations. All of Concessionaire's construction and Alterations shall be made and performed in a good and workmanlike manner and shall be diligently performed to completion strictly in accordance with the approved plans and specifications therefore.

Section 3.03 Responsibility for Alterations

All Alterations made by Concessionaire shall be maintained by Concessionaire in good working order at the sole expense of Concessionaire during the Term of this Agreement, or any extension or renewal hereof.

Section 3.04 Construction

Concessionaire shall ensure that all improvements and Alterations are constructed to completion in accordance with the approved plans thereof and that all persons or entities performing work or providing materials relating to such improvements including, without limitation, all contractors, subcontractors, sub-subcontractors, laborers, materialmen, suppliers and professionals, are paid in full for such services and materials.

Section 3.05 No Liens

Concessionaire covenants and agrees that nothing contained in this Agreement shall be construed as consent by County to subject the estate of County to liability under the Construction Lien Law of the State of Florida, it being expressly understood that County's estate shall not be subject to such liability. Concessionaire shall notify any and all parties or entities performing work or providing materials relating to any improvements made by Concessionaire of this provision of this Agreement. If so requested by Department, Concessionaire shall file a notice satisfactory to County in the Public Records of Palm Beach County, Florida, stating that County's interest shall not be subject to liens for improvements made by Concessionaire. In the event that a construction lien is filed against the Concessionaire's Premises or other County property in connection with any work performed by or on behalf of Concessionaire, Concessionaire shall satisfy such claim, or transfer same to security, within 10 days from the date of filing. In the event that Concessionaire fails to satisfy or transfer such claim within said 10 day period, County may do so and thereafter charge Concessionaire and Concessionaire shall promptly pay to County upon demand, as Additional Rent, all costs incurred by County in connection with the satisfaction or transfer of such claim, including attorney's fees. Further, Concessionaire agrees to indemnify, defend, and save County harmless from and against any damage or loss incurred by County as a result of any such construction lien.

ARTICLE IV CONDUCT OF BUSINESS AND USE OF PREMISES BY CONCESSIONAIRE

Section 4.01 Use

Concessionaire shall use and occupy the Premises solely and exclusively to manage and operate the Juno Beach Fishing Pier concession for the benefit of the public. Concessionaire shall be responsible for providing services consisting of, but not limited to: operation of a bait shop, provision of fishing tackle and fishing equipment, rental of related equipment, operation of a snack bar with non-alcoholic beverages, collection of pier admission fees, and sale of sundry items. Concessionaire shall not use, permit, or suffer the use of the Premises for any other use, business, or purpose whatsoever without the prior written consent of Department, which consent may be granted or withheld in Department's sole discretion. Concessionaire shall comply with the Rules and Regulations set forth in Exhibit "B" as well as Palm Beach County Parks and Recreation Ordinance (Ordinance No. 2004-022) as same may be amended from time to time.

Section 4.02 Operation of Business

Concessionaire shall operate its business upon the entire Premises during the Term of this Agreement with due diligence and efficiency and in a manner prudent and in accord with generally accepted business practices within the locale for Concessionaire's business to enhance the public's use of the Pier.

Concessionaire shall operate the concession seven (7) days per week, twenty four hours per day during each and every week of non-turtle season (November 1 through February 28/29) and from one (1) hour before sunrise to sunset every day during each and every week of turtle season (March 1 through October 31), weather conditions permitting. Concessionaire shall submit an operations schedule to the Department for approval prior to beginning operations. Concessionaire shall submit any proposed changes to the operations schedule to the Department, in writing, at least two (2) business days in advance, for approval prior to implementation. Concessionaire shall not implement any changes unless **written** approval has been received from the Department.

The Concessionaire shall sell all usual, customary and ordinary types of bait used for sport fishing and shall maintain a complete inventory of all customary types of fishing tackle, fishing equipment and fishing supplies for rental by the public. The Department reserves the right to mandate that certain items, deemed reasonably necessary by the Department, be carried by the Concessionaire. Concessionaire shall have available for sale various types of food and non-alcoholic beverages for participants and spectators on the Pier. All products to be sold, and pricing of same, must be approved in writing by the Department prior to any sales. Any changes to approved items and prices must be submitted in writing to the Department and accepted prior to implementation of changes.

Concessionaire shall not prohibit or hinder County or Department personnel or any law enforcement officers from performing their official duties. Concessionaire shall ensure that Concessionaire and all persons acting on behalf of Concessionaire obey instructions from County or Department personnel, including Ocean Rescue staff and Park Rangers. Concessionaire shall not commit or permit any reckless or dangerous conduct on the Premises at any time. This includes, but is not limited to, violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance.

Concessionaire shall comply with the permit requirements developed by County's Department of Environmental Resources Management and Florida's Department of Environmental Protection relative to Submerged Lands Lease Special Conditions, as amended, including but not limited to those set forth in Exhibit "B" attached hereto.

All rates for goods and services must be visibly posted on the Premises at all times during operation in accordance with Article V.

Concessionaire shall provide telephone and/or cellular phone service at the Premises during all hours of operation for emergency calls and to ensure accessibility by the public for reservations, general questions, schedules, etc.

Concessionaire shall obtain and maintain all licenses and permits necessary to operate the concession at its own expense. Proof of same shall be required fifteen (15) days prior to the Commencement Date, upon request. Concessionaire shall conduct operations in such a manner as to meet all applicable health standards and codes.

Concessionaire shall provide all equipment for the safe and efficient operation of the concession service and, within 30 days of the Commencement Date, shall provide the Department with an inventory of all equipment provided. All equipment, installation and maintenance shall be the responsibility of the Concessionaire including the procurement and maintenance of fire prevention and fire extinguishing devices. All equipment shall be maintained in a clean and sanitary condition and maintenance practices shall meet all applicable Governmental Regulations as defined in Section 4.04 below. Any equipment determined to be unsafe or questionable, in the Department's sole discretion, shall be removed from service immediately and replaced by the Concessionaire in a timely manner. The County reserves the right to perform safety inspections through its Department without prior notice. Concessionaire shall immediately notify County through its Department of any possible health, safety and/or security hazards that may exist within any area so corrective actions can be determined and implemented.

Concessionaire shall conduct its operations and activities in a safe manner and comply with all safety and health regulations and standards imposed by Governmental Regulations. The Concessionaire agrees that neither they, nor employees or any person working for or on behalf of the Concessionaire shall require any personnel engaged in the performance of the Concessionaire's operations to work in surroundings or under working conditions which are unsanitary, unsafe, hazardous or dangerous to his or her health or safety as determined by Governmental Regulations.

Concessionaire shall employ a sufficient number of qualified staff to properly operate the concession. The Concessionaire shall assign a Pier Master(s) to operate the fishing pier and shall provide the Department with staff names, telephone numbers and responsibility levels. The Pier Master or another Department-approved designated person shall be present at the Pier during all hours of operation as specified.

Concessionaire shall be responsible for training all staff in the customer service philosophies and public relations concerns of the Department. The concessionaire's staff shall also be trained in the policies and procedures relative to the operation of the Pier. Staff shall advise all persons utilizing the facility, when necessary, of applicable rules, regulation and ordinances pertaining to the use and enjoyment of the Pier.

The Concessionaire and staff shall wear attire which, in the sole determination of the Department, is appropriate and shall conduct themselves in a professional manner at all times. Attire shall clearly distinguish Concession staff from County and Department staff. Use of profanity, alcohol, and illegal substances by Concessionaire, staff, service providers, subcontractors and agents is strictly prohibited.

The Concessionaire shall accept a minimum of three (3) major credit cards for payment of any customer charges of Five Dollars (\$5.00) or more. The selection of acceptable credit cards shall include at least two (2) of the following: Visa, MasterCard or American Express.

To every extent possible, the Concessionaire shall provide services to patrons in a manner consistent with the provisions of the Americans with Disabilities Act (ADA).

Concessionaire shall coordinate and cooperate with the Department regarding special events and activities conducted in the Park and shall, upon request from the Department, suspend operation of the concession when such events warrant the suspension of the operation of the concession.

Concessionaire shall not conduct special events or promotions of any kind within the Park unless prior written approval by the Department has been provided.

The Department Director, or his designee at the Department, may authorize closing of the Concession for the safety of Pier patrons. In these instances, the Pier shall remain closed until the County authorizes its reopening. Should Ocean Rescue staff determine that a safety condition exists that poses a risk to users of the facility, bathers in the guarded areas, and/or surfers in designated surfing areas, Ocean Rescue staff have the authority to direct the Concessionaire to close portions of, or the entirety of, the Pier on a daily basis for as long as the condition exists. If the closure, at the direction of the County, is for a period of seven (7) or more consecutive days, Concessionaire may request, in writing, that the monthly payment of Guaranteed Annual Rent be prorated, which request may be granted or denied in the County's sole and absolute discretion. Concessionaire shall suspend operation of the concession whenever severe storms or other severe climatic hazards make human health or safety a concern in the opinion of the Department.

Concessionaire shall keep, throughout the entire term of the Agreement or any extension thereof, all books of accounts and records customarily used in this type of operation, and as from time to time may be required by the County, in accordance with GAAP. Records shall be kept in such a way that any payments owed by County to the State pursuant to the Submerged Lands Lease can be readily calculated. Such books of accounts and records shall be retained and available for such period of time as provided herein unless otherwise approved by the County. The County, at all times, throughout the term of the Agreement or any extension thereof and for up to three (3) years following expiration, shall have the right to audit and examine during normal working hours, all such records and books or account relating to Concessionaire's operation, provided that Concessionaire shall not be required to retain such books of accounts and records for more than three (3) years after the end of the final year of this Agreement including any extensions thereto. Concessionaire shall arrange for the books of accounts and records to be brought to a location convenient to the auditors for the County in order for the County to conduct the audits and inspections. Failure of the Concessionaire to keep record of and provide the information to County as set forth herein shall be considered a default under the terms of this Agreement. The requirements set forth in this paragraph shall survive the termination or expiration of this Agreement.

The County entered into this Agreement with Concessionaire because Concessionaire was selected as the best respondent to the County's Request for Proposals (RFP) to provide concession services at the Pier. As such, the Concessionaire agrees to maintain generally, the type of food, non-alcoholic beverages and sundry items, and the range of prices submitted with the Concessionaire's response to the RFP as reflected on Exhibit "F" attached hereto and made a part hereof. Concessionaire shall obtain written approval from the Manager of Support Services of the Department before altering its sale items or prices. Only minor changes may be approved by the Department, and such approval shall be granted in the sole and absolute discretion of the Department's Manager of Support Services. Proposed changes that would alter the services or prices so they are no longer substantially the same as those submitted with the Concessionaire's response to the RFP shall not be permitted.

Section 4.03 Waste or Nuisance

Concessionaire shall not commit or suffer to be committed any waste upon the Premises,

or commit or permit the maintenance or commission of any nuisance or other act or thing which may disturb the quiet enjoyment of visitors of the Pier, or which may result in damage or depreciation of value of the Pier or which may affect County's fee interest in the Premises or which results in an unsightly condition. Concessionaire, at its sole cost and expense, will keep the Premises free of rodents, vermin and other pests, and shall secure the services of a licensed pest control company to ensure, by regularly scheduled applications, that the Premises are kept free of pests.

Section 4.04 Governmental Regulations

Concessionaire shall, at Concessionaire's sole cost and expense, comply with all ordinances, laws, statutes and regulations promulgated thereunder of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force (individually and collectively, the "Governmental Regulations"), pertaining to Concessionaire or Concessionaire's use of the Premises, the equipment located on the Premises, or the Premises generally. Concessionaire shall indemnify, defend and save County harmless from any and all penalties, fines, costs, expenses, suits, claims, or damages resulting from Concessionaire's failure to perform its obligations in this Section. This Section shall survive termination of this Agreement.

Section 4.05 Non-Discrimination

Concessionaire shall assure and certify that it will comply with the Title IV of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation or disability with respect to any activity occurring in the Premises, or under this Agreement. Concessionaire warrants that the Premises shall be open to and benefit all visitors to the Park and that the general public shall be admitted to the Pier on a non-discriminatory basis.

Section 4.06 Surrender of Premises

Upon termination or expiration of this Agreement, the Concessionaire, at its sole cost and expense, shall remove all such Alterations except those identified in Exhibit "E" attached hereto and restore the Premises if so directed by County. Concessionaire shall confirm with County the Alterations to be removed prior to removal. In no event shall Alterations be removed from the Premises without prior consent in writing from the County. If the Concessionaire fails to remove Alterations identified by County to be removed and fails to restore the Premises upon the expiration of the Term of this Agreement or any renewal hereof to its condition on the Commencement Date of this Agreement, such Alterations shall become the property of the County. In such event, should County so elect, County may restore the Premises to its original condition and Concessionaire shall pay the cost of such restoration, with allowance for ordinary wear and tear arising from Concessionaire's permitted use of the Premises as specified herein, promptly upon demand.

Section 4.07 Hazardous Substance

Concessionaire shall not use, maintain, store or dispose of any contaminants including, but not limited to, Hazardous Materials or toxic substances, chemicals or other agents used or produced in Concessionaire's operations, in the Premises, or any adjacent land in any manner not permitted by Environmental Laws. Furthermore, Concessionaire shall not cause or permit the Disposal of Hazardous Materials upon the Premises or upon adjacent lands and shall operate and occupy the Premises in compliance with all Environmental Laws. For purposes hereof, Hazardous Materials shall mean any hazardous or toxic substance, material, waste of any kind, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws. Disposal shall mean the release, storage, use, handling, discharge or disposal of such Hazardous Materials. Environmental Laws shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

Any Disposal of a Hazardous Material, whether by Concessionaire or any third party, shall be reported to Department immediately upon Concessionaire becoming aware of such Disposal.

Concessionaire shall be solely responsible for the entire cost of remediation and clean up of any Hazardous Materials disposed of or discovered upon the Premises, or emanating therefrom onto adjacent lands, as a result of the use and occupancy of the Premises by Concessionaire, or Concessionaire's agents, licensees, invitees, subcontractors, Service Providers, or employees.

Concessionaire hereby agrees to indemnify, defend and hold harmless County from and against any and all claims, suits, judgments, loss, damage, fines or liability which may be incurred by County, including reasonable attorney's fees and costs, which may arise directly, indirectly or proximately as a result of any violation of the Disposal of any Hazardous Materials in violation of this provision. Concessionaire's responsibility hereunder shall continue and apply to any violation hereof, whether the same is discovered during the term hereof or otherwise. While this provision establishes contractual liability of Concessionaire, it shall not be deemed to alter or diminish any statutory or common law liability of Concessionaire.

Concessionaire acknowledges that County would not have entered into this Agreement without the indemnification contained herein and acknowledges the receipt and sufficiency of separate good and valuable consideration for such indemnification. This provision shall survive expiration or termination of this Agreement.

Section 4.08 Security of Premises

Concessionaire acknowledges and accepts full responsibility for the security and protection of the Premises and any inventory, equipment, or facilities now existing or hereafter placed on or installed in or upon the Premises, and for the prevention of unauthorized access to the Premises. Concessionaire expressly acknowledges that any security measures deemed necessary or desirable for protection of the Premises shall be the sole responsibility of Concessionaire at no cost to County. Notwithstanding the above, Concessionaire shall notify Department of any incident resulting in loss of or damage to Premises or breach of security whether or not such incident is reported to the Palm Beach County Sheriff's Office. Notification of Department shall be made via telephone call to Support Services at the Department no later than 24 hours after any such incident. The existing security system in the bait concession building shall be monitored by a central monitoring station. The central monitoring station shall notify the appropriate law enforcement agency and the Concessionaire if the alarm is activated. The Concessionaire shall be responsible for responding to alarm activations. The Concessionaire shall be responsible for payment of any false alarm charges and/or fines. Concessionaire shall be required to provide County with continuous and unescorted access to the Premises as required by Article XIV. County, through its Department, may implement key, card or code control measures reasonably acceptable to Concessionaire to safeguard the keys, cards or code provided pursuant to this requirement. During turtle season, the Concessionaire shall secure the bait concession and Pier by locking all doors and gates to the facility at sunset and shall reopen the facility no sooner than one (1) hour before sunrise. The Concessionaire will ensure that the Pier has been completely cleared of all public users of the facility prior to locking the gates.

Concessionaire shall perform a background check on each employee prior to the employee beginning work at the concession. Concessionaire shall forward a copy of each background check to the Department for review **prior** to the employee commencing work at the concession. County reserves the right to disallow employment of any candidate or employee whose background check reveals one or more disqualifying offense(s). A list of potential disqualifying offenses is available from the Department upon request. Concessionaire shall notify Department of any disqualifying offense it has knowledge of as to any of its employees during the term of this Agreement and Concessionaire shall immediately terminate employment of any and all employees whom Concessionaire discovers have committed a disqualifying offense.

Furthermore, although a fingerprint background check is not required under the terms of the background check set forth above, County reserves the right to subject Concessionaire's employees to fingerprint-based background checks to the extent permitted by law and to deny access rights to any Concessionaire employee in accordance with adopted laws, policies and

procedures. Concessionaire shall have no recourse or claim against County for denied access rights.

ARTICLE V SIGNAGE

Except for as set forth in Section 4.02, Concessionaire shall not place or permit to be placed or maintained on any exterior door, wall, window, fence or tree of the Premises and/or Park any sign, awning or canopy, without first obtaining County's written approval and consent through the Department. Any such signs not approved shall be immediately removed at the sole cost and expense of Concessionaire, upon written notification thereof by County. Concessionaire further agrees that such signs, awning, canopy, decoration, lettering, or other things, as may be approved, shall be maintained in good condition and repair at all times and shall conform to the criteria established from time to time by Department for the section of the Park within which the Premises is located. No advertising or any promotional items associated with the concession will be permitted within the Park or any other County facility or property without prior Department and/or County approval. Palm Beach County Ordinance, No. 2004-022, Section 21, prohibits any person from distributing, displaying or affixing any printed materials or advertisements to or within any park property.

ARTICLE VI REPAIRS AND MAINTENANCE OF PREMISES

Section 6.01 Responsibility of County and Concessionaire

County agrees to repair and maintain in good order and condition, ordinary wear and tear excepted, the roof, the roof drains, exterior walls, the utility lines outside the Premises (except for sewer lines clogged by grease or other Concessionaire-created problems), foundations and structural portions of the Premises and the plumbing systems serving the Premises. There is exempted from the preceding covenant, however: (i) repair, maintenance, or replacement of fixtures; (ii) repair of damage caused by Concessionaire, its employees, agents, contractors, customers, licensees or invitees to the Premises; (iii) maintenance, repair and replacement of any plumbing (including grease trap), electrical, air conditioning/heating system or equipment inside the Premises which, whether connected directly to the building's system or not, were installed by Concessionaire specifically to serve the Premises; (iv) interior repainting and redecoration, whether or not caused by, or growing out of any breakage, leakage or defective condition of the electric wiring, air conditioning or heating pipes and equipment, closets, plumbing, appliances, sprinklers, other equipment, or other facilities serving the Premises; (v) glass cleaning; (vi) janitorial services for the Premises; and (vii) any fixtures, cooking equipment, or fire suppression system whether inside the Premises or solely serving the Premises. County agrees to be responsible for painting the exterior of the Premises depicted on Exhibit "A" attached hereto, unless the Premises is damaged or defaced as a result of negligence by or act of the Concessionaire or the Concessionaire's patrons. The County shall have the sole obligation and duty to repair and replace vertical guardrails, sleepers, decking, planks, pilings, lights and light bulbs (on the Pier but not in the Premises). Repairs or replacement shall not be at County expense if damages have been determined to be a result of Concessionaire's negligence or Concessionaire's employees or agents negligence, such negligence to be determined solely by a County representative. Concessionaire shall promptly notify County through its Department immediately when any maintenance is required on items for which the County is responsible so the County is afforded the opportunity to act within a reasonable time frame. Should the Premises require major structural repair, the County may chose, at its option, to undertake structural repairs. The Concessionaire shall adjust its operations accordingly during such repairs and the Pier shall remain open unless the County determines that the Pier must be closed during such repairs.

The Concessionaire shall protect the County's capital investment in the Premises through exercise of a high standard of maintenance. Concessionaire, at a minimum, shall perform the following ongoing maintenance: a) clean interior and exterior walls, windows, doors, and surfaces; b) clean ceiling, floors, furnishings, lights, light bulbs, tubes, and concession equipment

as is customary for a quality concession; c) custodial services including but not limited to: cleaning the Premises, cleaning interior offices and storage room(s), cleaning fish cleaning tables; d) cleaning and maintaining the bait tanks and pumps. Concessionaire shall maintain the Premises and the Pier decking in a safe, sanitary condition free of litter and debris, objects and impediments. Concessionaire shall provide adequate refuse containers, remove trash daily and dispose of trash at the Concessionaire's expense. Concessionaire shall provide containers for collecting used monofilament and fishing tackle. Containers shall be placed along the Pier in approximately twenty (20) yard intervals beginning east of the Premises and shall be clearly posted as waste tackle and line depositories. Concessionaire shall be responsible for the removal and recycling of fishing tackle and line from depositories. Concessionaire shall repair all damages to concession premises caused by, resulting from, or in any way arising out of the Concessionaire's operations or use of concession Premises, whether such damage is caused by Concessionaire, its agents, or its invitees. Concessionaire shall maintain and repair all equipment thereon. Concessionaire shall repair all interior and exterior equipment, cash registers, tanks, pumps, air conditioning equipment and any other equipment used in the operation of the Pier. Concessionaire shall repaint, refurbish the facilities and replace furnishing and equipment as may be deemed necessary at the reasonable discretion of the Department. The Department reserves the right to, periodically throughout the term of the Agreement, inspect or cause to be inspected the concession Premises, identify any maintenance or repair items and report, in writing, the nature of these items and required corrective action. The Concessionaire is to provide a proposed schedule of cleaning, maintenance and repair of facilities.

In the event the threat of a tropical disturbance warrants the installation of hurricane shutters upon the Premises, County shall exercise its best efforts to install County provided hurricane shutters as part of its storm preparation for County facilities. Such installation shall be done according to the procedures set forth in the Department's Emergency Preparedness Plan.

Concessionaire shall immediately notify County through its Department of any possible health, safety and/or security hazards that may exist within any area so corrective actions can be determined and implemented. Neither County nor County's agents or servants shall be liable for any damages caused by, or growing out of any defect in the Premises. In no event shall County be liable for damages or injuries arising from the failure to make repairs, nor shall County be liable for damages arising from defective workmanship or materials in making such repairs. County shall have no obligation to commence repairs until fifteen (15) days after the receipt by County of written notice of the need for repairs. Concessionaire waives the provision of any law, or any right Concessionaire may have under common law, permitting Concessionaire to make repairs at County's expense.

Except as provided in this Section, County shall not be obligated or required to make or conduct any other maintenance or repairs, and all other portions of the Premises shall be kept in good repair and condition by Concessionaire, and at the end of the Term of this Agreement, Concessionaire shall deliver the Premises to County in good repair and condition, reasonable wear and tear arising from Concessionaire's permitted use of the Premises as specified herein excepted.

ARTICLE VII UTILITIES

Concessionaire shall be solely responsible for providing and maintaining all utility services to the Premises. Concessionaire shall promptly pay all costs and expenses relating to providing utility services to the Premises, including, without limitation, construction and connection charges, and shall pay directly to the utility company or the provider of such other services all charges and assessments for any utility or other services provided including, without limitation, electric, gas, water, sewer, waste management and phone charges, or any other utility used or consumed on the Premises. Concessionaire's utility service installations must be reviewed and approved by the Department as provided for in Section 3.02, Concessionaire's Alterations, and is subject to Section 3.03, Responsibility for Alterations. In no event shall County be liable for an

interruption or failure in the supply of any utility to the Premises.

ARTICLE VIII INSURANCE

Section 8.01 Comprehensive General Liability Insurance

Concessionaire shall, during the entire Term hereof, keep in full force and effect Comprehensive General Liability Insurance with a minimum limit of ONE MILLION DOLLARS (\$1,000,000) per occurrence combined single limit and TWO MILLION DOLLARS (\$2,000,000) General Aggregate for bodily injury, personal injury and property damage liability; fire legal liability with a minimum limit of \$100,000, and medical payments with a minimum limit of \$5,000. The Comprehensive General Liability policy shall include, but not be limited to, providing coverage for Premises/Operations, Product/Completed Operations, Contractual Liability, Personal Injury/Advertising Injury, Independent Contractors, Cross Liability and Broad Form Property Damage Liability coverages. The required insurance coverage(s) shall be a continuous condition precedent to the continued use of the Premises by the Concessionaire. This Agreement shall terminate immediately upon expiration, cancellation or non-renewal of the required insurance(s). Failure by the Concessionaire to forward a current or updated certificate of insurance to the designated County representative prior to or upon the expiration date of the certificate on file with the County may result in termination of this Agreement.

Section 8.02 Workers' Compensation & Employers Liability

Concessionaire shall maintain, during the entire Term hereof, Workers' Compensation & Employers Liability at the minimum statutory limits applying to any and all employees and shall maintain continuous compliance with Chapter 440 Florida Statutes and applicable federal laws or acts.

Section 8.03 Fire and Allied Lines Insurance

Concessionaire shall at all times during the Term hereof, and at its cost and expense, maintain in full force and effect policies of insurance covering all Alterations made by or on behalf of Concessionaire and Concessionaire's fixtures and equipment located on the Premises, in an amount not less than one hundred percent (100%) of its full replacement cost, providing protection with "All-Perils" coverage as provided by the "Special-Cause of Loss Form". The proceeds of such insurance, so long as this Agreement remains in effect, shall be used to repair or replace the building and Alterations, fixtures and equipment so insured. All property, including without limitation, stock, inventory, fixtures and equipment belonging to Concessionaire or any occupant of the Premises or the building shall be there at the risk of Concessionaire or such other person only, and County shall not be liable for damage thereto or theft or misappropriation thereof. Additionally, the Concessionaire shall maintain Business Interruption with Extra Expense insurance providing coverage for loss of net income and all continuing expenses at a minimum limit appropriate to cover the maximum period of restoration or interruption of the Concessionaire. Concessionaire shall deliver to the County certificates of such fire insurance policies which shall contain a clause requiring the insurer to give the County ten (10) days prior notice of cancellation of such policies.

Section 8.04 Waiver by Concessionaire and Concessionaire's Insurers of Subrogation

In the event of loss or damage to the building, Premises and/or any contents, the Concessionaire shall look solely to any insurance in its favor before making any claim against the County, and the Concessionaire shall obtain and deliver to the County, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the County for loss or damage within the scope of the insurance, and the Concessionaire, for itself and its insurers, waives all such insured claims against the County.

Section 8.05 Insurance Terms and Conditions

The Comprehensive General Liability Insurance policies shall name the County as an Additional Insured with a "*CG 2026 - Additional Insured - Managers or Lessors of Premises*", or similar endorsement. Such insurance shall be issued by an insurance company licensed to do

business by Florida's Department of Insurance with Florida Certificate of Authority in full force and effect. The issuing insurance company shall maintain a minimum A.M. Best financial rating of "A-" and shall be subject to the review and approval of the Risk Management Department of the County. A Certificate of Insurance evidencing such insurance coverage shall be provided to the County prior to the Commencement Date, such Certificate indicating at least ten (10) days prior notice of cancellation or adverse material change in coverage. In no event shall the limits of said insurance policies be considered as limiting the liability of Concessionaire under this Agreement. In the event that Concessionaire shall fail to obtain or maintain in full force and effect any insurance coverage required to be obtained by Concessionaire under this Agreement, County may procure same from such insurance carriers as County may deem proper, and Concessionaire shall pay as Additional Rent, upon demand of County, any and all premiums, costs, charges and expenses incurred or expended by County in obtaining such insurance. Notwithstanding the foregoing sentence, Concessionaire shall nevertheless hold County harmless from any loss or damage incurred or suffered by County from Concessionaire's failure to maintain such insurance.

ARTICLE IX INDEMNIFICATION AND DISCLAIMER OF LIABILITY

Section 9.01 Indemnification

Concessionaire shall indemnify, defend and save harmless the County from and against any and all claims, suits, actions, damages and/or causes of action arising during the Term of this Agreement for any personal injury, loss of life, environmental contamination, and/or damage to property sustained in or about the Premises or building by reason, during, or as a result of the use and occupancy of the Premises or building by the Concessionaire, its agents, employees, licensees, invitees, any Sub-Concessionaire and the general public, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claim at trial or on appeal. In the event County shall be made a party to any litigation commenced against Concessionaire or by Concessionaire against any third party, then Concessionaire shall protect and hold County harmless and pay all costs and attorney's fees incurred by County in connection with such litigation, and any appeals thereof. Concessionaire recognizes the broad nature of this indemnification provision and specifically acknowledges that County would not have entered into this Agreement without Concessionaire's agreement to indemnify County and further acknowledges the receipt of good and valuable separate consideration provided by County in support hereof in accordance with the laws of the State of Florida. This Section shall survive expiration or termination of this Agreement.

Section 9.02 DISCLAIMER OF LIABILITY

COUNTY HEREBY DISCLAIMS, AND CONCESSIONAIRE HEREBY RELEASES COUNTY, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY CONCESSIONAIRE, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS AGREEMENT OR ANY EXTENSION THEREOF INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF THE CONCESSIONAIRE OR CONCESSIONAIRE'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE PREMISES, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS CAUSED SOLELY BY COUNTY'S SOLE NEGLIGENCE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR ANY OTHER DAMAGE RELATED TO CONCESSIONAIRE'S USE OF THE PREMISES PURSUANT TO THIS AGREEMENT.

ARTICLE X DESTRUCTION OF PREMISES

Section 10.01 Total or Partial Destruction

In the event the Premises shall be damaged or injured by fire, the elements, unavoidable accident or other casualty, without the fault of Concessionaire, during the Term of this Agreement or any extension thereof, but are not thereby rendered untenable in whole or in part, then the County shall, at its own expense, cause such damage, except to Concessionaire's equipment, trade fixtures and Concessionaire's Alterations, to be repaired, and the Guaranteed Annual Rent and other charges payable by Concessionaire hereunder shall not be abated. If by reason of such occurrence, the Premises shall be rendered untenable only in part, County shall, at its own expense, cause the damage, except to Concessionaire's equipment, trade fixtures, and Concessionaire's Alterations, to be repaired, and the Guaranteed Annual Rent meanwhile shall be abated proportionately as to the portion of the Premises rendered untenable. If the Premises shall be rendered wholly untenable by reason of such occurrence, the County may, in its sole and absolute discretion, at its own expense, cause such damage, except to Concessionaire's equipment, trade fixtures, and Concessionaire's Alterations, to be repaired, and the Guaranteed Annual Rent meanwhile shall be abated in whole. Notwithstanding anything in the foregoing to the contrary, County and Concessionaire shall each have the right, to be exercised by notice in writing delivered to the other party within forty-five (45) days after said occurrence, to elect not to reconstruct the destroyed Premises, and in such event this Agreement and the tenancy hereby created shall cease as of the date of said occurrence and the parties hereto shall be relieved of all further obligations hereunder.

Section 10.02 Damage Near End of Term

If the Premises are destroyed or damaged during the last eighteen (18) months of the Term or Renewal Term of this Agreement and the estimated cost of repair exceeds ten percent (10%) of the Guaranteed Annual Rent then remaining to be paid by Concessionaire for the balance of the Term, County may, at its option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Concessionaire of its election to do so within thirty (30) days after the date of occurrence of such damage and the parties hereto shall be relieved of all further obligations hereunder.

Section 10.03 Reconstruction of Alterations

Concessionaire, at its sole cost and expense, shall be responsible for the repair and restoration of Concessionaire's Alterations and the replacement of its stock in trade, trade fixtures, furniture, furnishings and equipment. Concessionaire shall commence the installation of fixtures, equipment, and merchandise hereof promptly upon delivery to it of possession of the Premises and shall diligently prosecute such installation to completion.

Section 10.04 Insurance Proceeds to County

County's obligation to restore the Premises as required under this Article X is expressly contingent upon County's receipt of, and limited to the extent of, any insurance proceeds received by County relating to the Premises.

ARTICLE XI ASSIGNMENT AND SUBLETTING

Section 11.01 Consent Required

Concessionaire may not assign, mortgage, pledge or encumber this Agreement, in whole or in part, nor sublet or rent all or any portion of the Premises, nor enter into any management licensing or similar agreement without the prior written consent of County in each instance, which may be granted or withheld at County's sole and absolute discretion. The consent by County to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. If this Agreement is assigned, or if the Premises or any part thereof is sublet or occupied by any party other than Concessionaire and Concessionaire is in default under its obligations under this Agreement, County may collect rent from the assignee,

Service Provider, sub-contractor or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, Service Provider, sub-contractor, or occupancy as Concessionaire, or a release from the further performance by Concessionaire of the covenants on the part of Concessionaire herein contained. This provision shall be construed to include a prohibition against any assignment, mortgage, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary. Notwithstanding any assignment or sublease, Concessionaire shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions hereof or any rents or other sums to be paid hereunder. Concessionaire acknowledges and agrees that any and all right and interest of the County in and to the Premises, and all right and interest of the County in this Agreement, may be conveyed, assigned or encumbered at the sole discretion of the County at any time.

Section 11.02 Significant Change of Ownership

If the Concessionaire is a corporation (other than one whose shares are regularly and publicly traded on a recognized stock exchange), partnership, limited liability company, or other business entity, Concessionaire represents that the ownership and power to control such entity belongs to and is vested in the person or persons executing this Agreement and/or as those disclosed to County prior to executing this Agreement. If there shall occur any changes of ownership of and/or control of Concessionaire, whether such change of ownership is by sale, assignment, bequest, inheritance, operation of law or otherwise, without the prior written consent of the County, then County shall have the option to terminate this Agreement upon thirty (30) days notice to Concessionaire.

ARTICLE XII RULES AND REGULATIONS

The rules and regulations appended to this Agreement as Exhibit "B" are hereby made a part of this Agreement, and Concessionaire agrees to comply with and abide by same. Concessionaire's failure to keep and observe said rules and regulations shall constitute a default under the terms and conditions of this Agreement. County reserves the right from time to time to amend and supplement the rules and regulations, and to impose additional rules and regulations. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to the Concessionaire. Concessionaire agrees to comply with all additional and supplemental rules and regulations upon notice of same from County.

ARTICLE XIII DEFAULT

Section 13.01 Default by Concessionaire

The occurrence of any one or more of the events set forth below in (a) to (k), inclusive (any of which is referred to hereinafter as an "Event of Default"), shall constitute an Event of Default by Concessionaire under this Agreement:

- a) Concessionaire fails to open its business in the Premises within thirty (30) days of the Commencement Date.
- b) Concessionaire fails to pay any one or more of said monthly installments of Guaranteed Annual Rent, or any other sums due hereunder as Additional Rent, as and when the same become due, without any prior demand.
- c) Concessionaire ceases to fully conduct its business as specified herein for a period of five (5) consecutive business days as determined by the County.
- d) A petition in bankruptcy under any present or future bankruptcy laws (including but not limited to reorganization proceedings) is filed by or against the Concessionaire and such petition is not dismissed within thirty (30) days from the filing thereof, or in the event Concessionaire is adjudged bankrupt.
- e) An assignment for the benefit of creditors is made by Concessionaire.
- f) An appointment, by any court, of a receiver or other court officer of

- Concessionaire's property and such receivership is not dismissed within thirty (30) days from such appointment.
- g) Concessionaire's estate is taken by execution, attachment or process of law or subjected to any bankruptcy proceeding.
 - h) Concessionaire removes, attempts to remove, or permits to be removed from the Premises, except upon County's approved assignment or subletting or in the usual course of trade, the goods, furniture, effects or other property of the Concessionaire brought thereon.
 - i) Concessionaire vacates the Premises or abandons the possession thereof before the expiration of the Term of this Agreement and without the written consent of the County, or uses the same for purposes other than the purposes for which the same are hereby licensed, or ceases to use the Premises for the purposes herein contained.
 - j) An execution or other legal process is levied upon the goods, furniture, effects or other property of Concessionaire brought on the Premises, or upon the interest of Concessionaire in this Agreement, and the same is not satisfied or dismissed within ten (10) days from such levy.
 - k) Concessionaire violates any other term, condition or covenant herein on the part of Concessionaire to be performed, and Concessionaire fails to commence and proceed with diligence and dispatch to remedy the same within ten (10) days after written notice thereof, is given by County to Concessionaire.

If any Event of Default occurs, then at any time thereafter while the Event of Default continues, County shall have the right to pursue such remedies as may be available to County under the law, including, without limitation, the right to give Concessionaire notice that County intends to terminate this Agreement upon a specified date not less than three (3) days after the date notice is received by Concessionaire, in which event this Agreement shall then expire on the date specified as if that date had been originally fixed as the expiration date of the Term of this Agreement. If, however, the default is cured within the three (3) day period and the County is so notified, this Agreement will continue.

Section 13.02 Default by County

County shall not be in default unless County fails to perform its obligations hereunder within the time specified and if none, within a reasonable time, but in no event later than thirty (30) days after written notice by Concessionaire to County, specifying how County has failed to perform such obligations; provided, however, that if the nature of County's obligations is such that more than thirty (30) days are required for performance, then County shall not be in default if County commences performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

ARTICLE XIV ACCESS BY COUNTY

County or County's agents shall have the right to enter the Premises, at reasonable times, to examine and inspect the same and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable. The Concessionaire must provide the County with access to the Premises within two (2) business days after the County's request for access. The Rent and other charges herein reserved and imposed shall not be abated while said repairs, alterations, improvements, or additions are being made. During the six (6) months prior to the expiration of the initial Term of this Agreement or any Renewal Term, County may exhibit the Premises to prospective Concessionaires, and place upon the Premises the usual notice "To Let" or similar notice, in a location that does not obscure Concessionaire's sign, which notices Concessionaire shall permit to remain thereon without molestation. If Concessionaire shall not be personally present to open and permit entry into the Premises, at any time, when for any reason entry therein shall be necessary, County or County's agents may enter the same without in any manner affecting the obligations and covenants of this Agreement. Any such entry shall be calculated to minimize interference with or disruption of Concessionaire's operations within the

Premises. Nothing herein contained, however, shall be deemed or construed to impose upon the County any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Premises or the building or any part thereof, except as otherwise herein specifically provided.

ARTICLE XV ANNUAL BUDGETARY FUNDING/CANCELLATION

This Agreement and all obligations of County hereunder are subject to and contingent upon annual budgetary funding and appropriations by the Palm Beach County Board of County Commissioners. Notwithstanding anything in this Agreement to the contrary, after the second anniversary of the Commencement Date, County shall have the right to cancel this Agreement for any reason upon ninety (90) days prior written notice to the Concessionaire, whereupon the parties shall be relieved of all further obligations hereunder.

ARTICLE XVI QUIET ENJOYMENT

Upon payment by the Concessionaire of the Guaranteed Annual Rent, Additional Rent and other charges herein provided, and upon the observance and performance of all the covenants, terms and conditions on Concessionaire's part to be observed and performed, Concessionaire shall peaceably and quietly hold and enjoy the Premises for the Term hereby demised without hindrance or interruption by County or any other person or persons lawfully or equitably claiming by, through or under the County, subject, nevertheless, to the terms and conditions of this Agreement.

ARTICLE XVII GUARANTY

The payment of all rents and charges, and the performance of all covenants of Concessionaires, required by this Agreement are guaranteed pursuant to that Guaranty Agreement, a copy of which is attached hereto as Exhibit "C" and made a part hereof.

ARTICLE XVIII MISCELLANEOUS

Section 18.01 Entire Agreement

This Agreement and any Exhibits attached hereto constitute all agreements, conditions and understandings between County and Concessionaire concerning the Premises and supersedes all other negotiations, representations, or agreement, written or oral, relating to this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or Concessionaire unless reduced to writing and signed by them.

Section 18.02 Amendments

This Agreement may be modified and amended only by written instrument executed by the parties hereto.

Section 18.03 Notices

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service (provided in each case a receipt is obtained), or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5 P.M. on a business day and on the next business day if

transmitted after 5 P.M. or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

(a) If to the County at:

Palm Beach County
Parks & Recreation Department
Attn: Manager, Support Services
John Prince Park
2700 Sixth Avenue South
Lake Worth, FL 33461
Telephone 561-963-6753
Fax 561-242-6930

(b) with a copy to:

Palm Beach County
Property and Real Estate Management Division
Attn: Director
2633 Vista Parkway
West Palm Beach, FL 33411-5605
Telephone 561-233-0217
Fax 561-233-0210

&

Palm Beach County Attorney's Office
Attn: Real Estate Attorney
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Telephone 561-355-2225
Fax 561-355-4398

(c) If to the Concessionaire at:

Tuna Management Inc.
Sven Tutz
1540 SE 23 Ave, Pompano Beach FL 33062
Telephone 954-401-8897
Fax 954-237-4313

Any party may from time to time change the address to which notice under this Agreement shall be given such party, upon three (3) days prior written notice to the other parties.

Section 18.04 Disclosure of Beneficial Interests

Concessionaire represents that simultaneously with Concessionaire's execution of this Agreement, Concessionaire has executed and delivered to County, the Disclosure of Beneficial Interests attached hereto as Exhibit "D" (the "Disclosure") disclosing the name and address of every person or entity having a 5% or greater beneficial interest in the ownership of the Concessionaire. Concessionaire warrants that in the event there are any changes to the names and addresses of the persons or entities having a 5% or greater beneficial interest in the ownership of the Concessionaire after the date of execution of the Disclosure and prior to the Effective Date of the Agreement, Concessionaire shall immediately, and in every instance, provide written notification of such change to the County pursuant to Section 18.03 of this Agreement.

Section 18.05 Severability

If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 18.06 Broker's Commission

Concessionaire represents and warrants that Concessionaire has not dealt with any real estate salesperson, agent, finder or broker in connection with this Agreement and further agrees to indemnify, defend and hold harmless County from and against any claims or demands of any such salesperson, agent, finder or broker claiming to have dealt with Concessionaire. The foregoing indemnification shall include all costs, expenses and fees, including reasonable attorney's fees at trial and all appellate levels, expended or incurred in the defense of any such claim or demand.

Section 18.07 Recording

Concessionaire shall not record this Agreement, or any memorandum or short form thereof, in the public records of Palm Beach County. Any such recording shall constitute a default hereunder and shall result in immediate termination of this Agreement.

Section 18.08 Waiver of Jury Trial

THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH PROCEEDINGS OR COUNTER CLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN CONNECTION WITH THIS AGREEMENT OR CONCESSIONAIRE'S USE AND OCCUPANCY OF THE PREMISES.

Section 18.09 Governing Law and Venue

This Agreement shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a State Court of competent jurisdiction in Palm Beach County, Florida.

Section 18.10 Radon

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from County's public health unit.

Section 18.11 Time of Essence

The parties expressly agree that time is of the essence in this Agreement and the failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall, at the option of the other party without liability, in addition to any other rights or remedies, relieve the other party of any obligation to accept such performance.

Section 18.12 Waiver, Accord and Satisfaction

No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(s) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver. The waiver by County of any default of any term, condition or covenant herein contained shall not be a waiver of such term, condition or covenant, or subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by County to or of any act by Concessionaire requiring County's consent to or approval shall not be deemed to waive or render unnecessary County's consent to or approval of any subsequent similar act by Concessionaire. No re-entry hereunder shall bar the recovery of rents or damages for the default of any of the terms, conditions or covenants on the part of Concessionaire herein contained. The receipt of rent after default or condition broken, or delay on the part of County to enforce any right hereunder, shall not be deemed a waiver of any proceeding default by Concessionaire of any term, covenant or condition of this Agreement, or a

waiver of the right of the County to terminate this Agreement or re-enter the Premises or to re-let same.

Section 18.13 Construction

No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 18.14 Incorporation by Reference

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

Section 18.15 Survival

Except as otherwise permitted herein, Concessionaire shall remain obligated hereunder to perform any duty, covenant or obligation imposed upon Concessionaire hereunder arising prior to the date of such termination.

Section 18.16 Effective Date of Agreement

This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners (the "Effective Date").

Section 18.17 Successors

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and permitted assigns of the said parties; and if there shall be more than one Concessionaire, they shall be bound jointly and severally by the terms, covenants and agreements herein. In the event County sells its interest in the building and the purchaser assumes County's obligations and covenants, County shall thereupon be relieved of all further obligations hereunder.

Section 18.18 Public Entity Crimes

As provided in Section 287.131-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Concessionaire certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), F.S. Concessionaire also certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder have not been suspended from doing business with Palm Beach County.

Section 18.19 Non-Discrimination

Concessionaire for itself, its successors in interest and assigns, does hereby covenant and agree that no person on the grounds of race, creed, color, national origin, sex, age or handicap shall be excluded from participation in or denied the use of the Premises.

Section 18.20 Independent Contractor Relationship

The Concessionaire is, and shall be, in the performance of all work, services, and activities under this Agreement, an Independent Contractor and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Concessionaire's sole direction, supervision, and control. The Concessionaire shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Concessionaire's relationship, and the relationship of its employees, to the County shall be that of an Independent

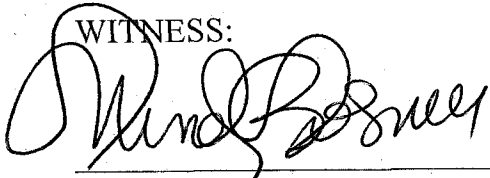
Contractor and not as employees or agents of the County.

The Concessionaire does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

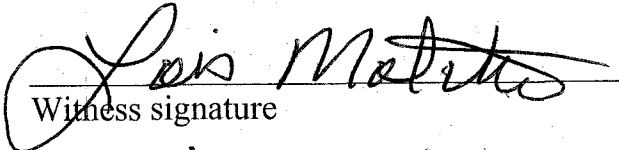
WITNESS:



Witness signature

Mindy Boswell

Print witness name



Witness signature

Lois Molitor

Print witness name

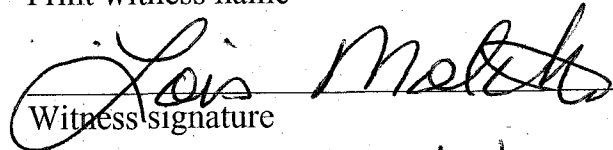
WITNESS:



Witness signature

Dennis Zannucci

Print witness name




Witness signature

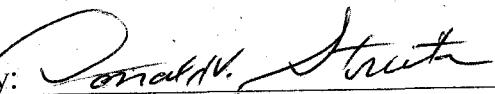
Lois Molitor

Print witness name

CONCESSIONAIRE:

By: 

Title: President

By: 

Title: Sec/Treasurer

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

COUNTY:

PALM BEACH COUNTY,
A political subdivision of the State of Florida

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

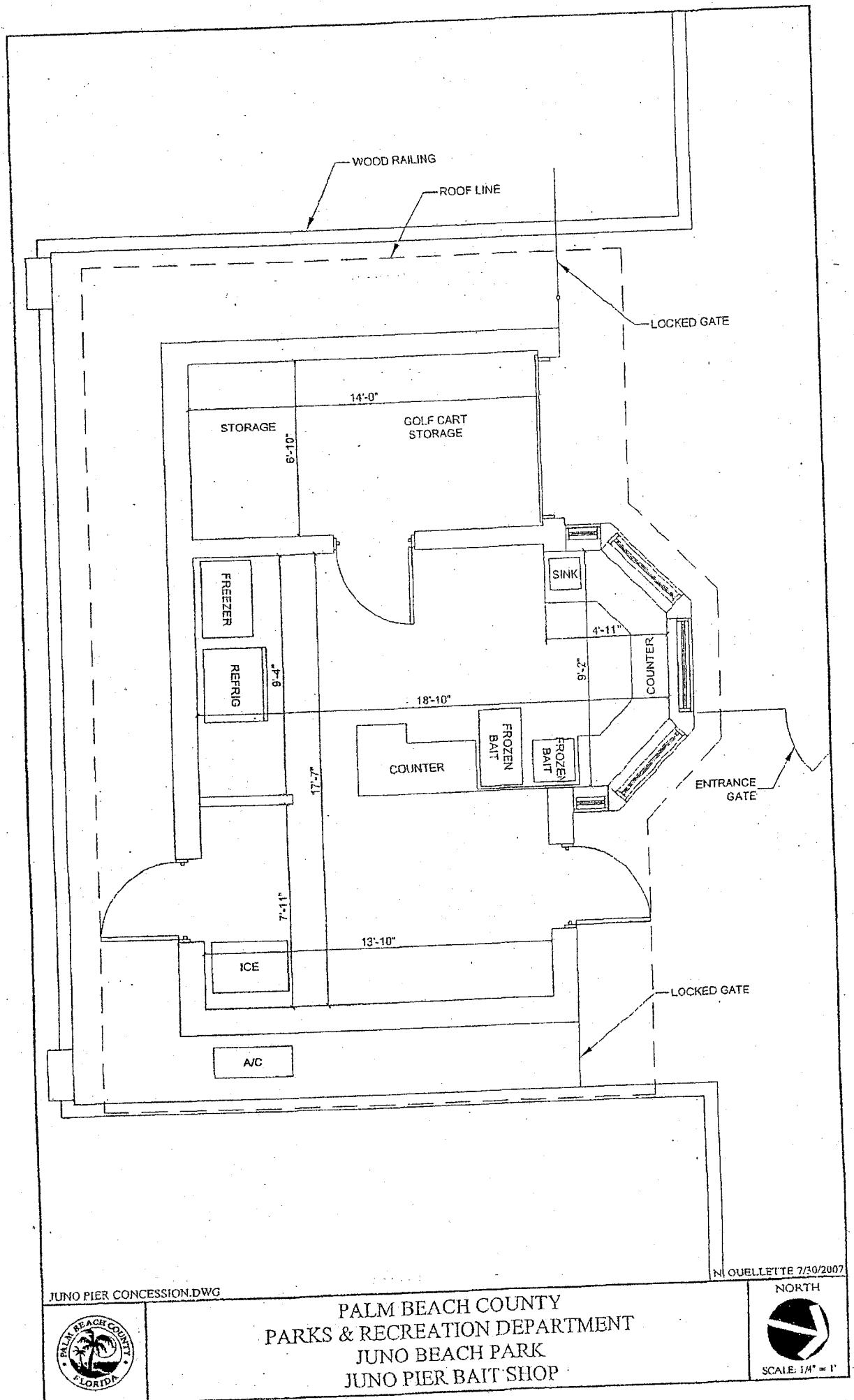
By: _____
Assistant County Attorney

By: _____
Addie L. Greene, Chairperson

APPROVED AS TO TERMS
AND CONDITIONS

By: Anthony Woy
Department Director

EXHIBIT "A"
TO THE CONCESSIONAIRE SERVICE AGREEMENT
"The Premises"



PALM BEACH COUNTY
 PARKS & RECREATION DEPARTMENT
 JUNO BEACH PARK
 JUNO PIER BAIT SHOP



EXHIBIT "A"

TO THE CONCESSIONAIRE SERVICE AGREEMENT

"The Premises"

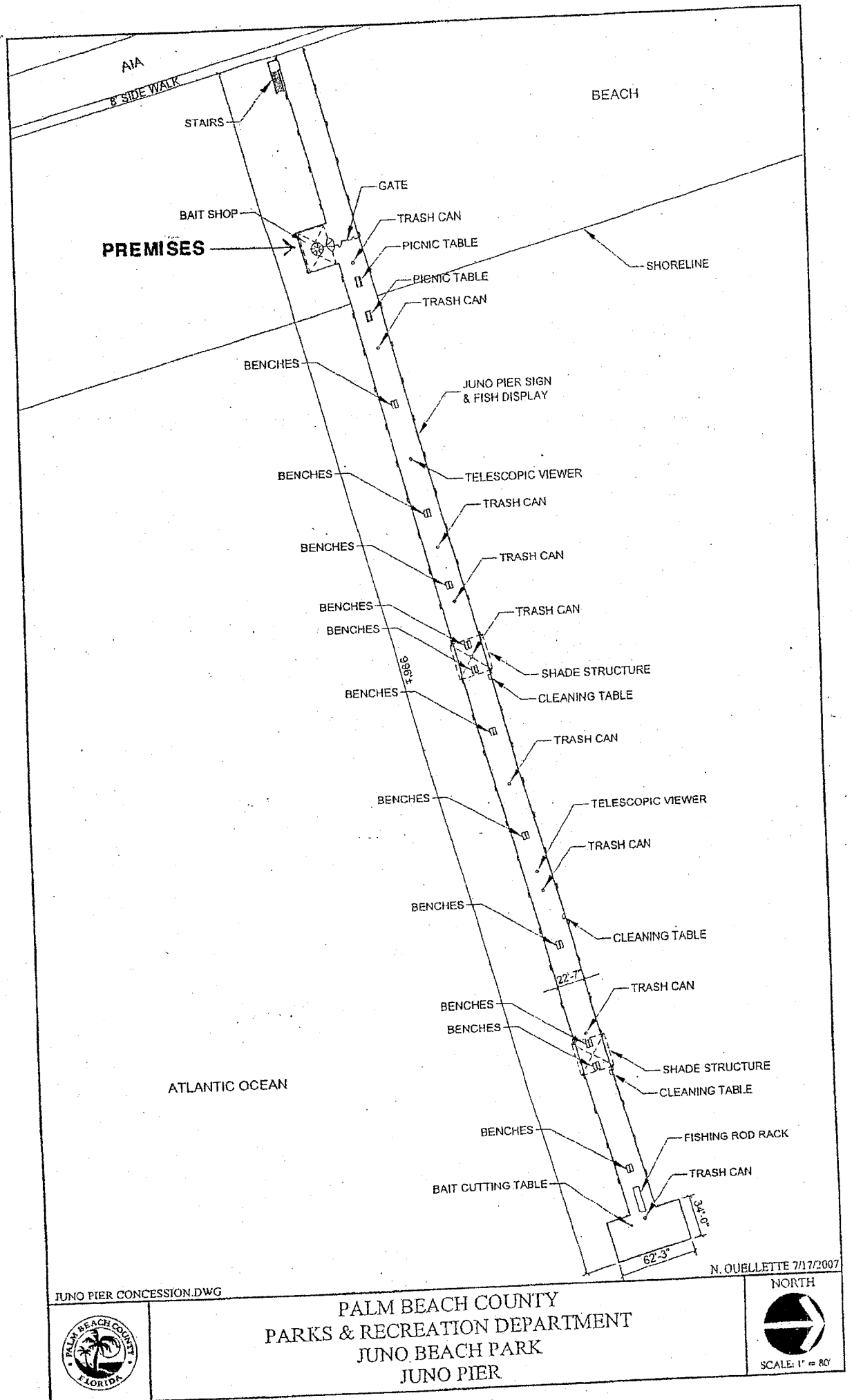


EXHIBIT "D"
TO THE CONCESSIONAIRE SERVICE AGREEMENT

CONCESSIONAIRE'S DISCLOSURE OF BENEFICIAL INTERESTS

TO: PALM BEACH COUNTY CHIEF OFFICER, OR HIS OR HER OFFICIALLY
DESIGNATED REPRESENTATIVE

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, this day personally appeared, Thomas Zannucci, hereinafter referred to as "Affiant", who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant is the President (position - i.e. president, partner, trustee) of Dania Pier Management Corp (name and type of entity - i.e. ABC Corporation, XYZ Limited Partnership), (the "Concessionaire") which entity intends to enter into an agreement with the County to provide concession services on the real property depicted on the attached Exhibit "A" (the "Premises").

2. Affiant's address is: 4320 SW Grove St
Palm City Fl. 34990

3. Attached hereto as Exhibit "B" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater beneficial interest in the Concessionaire and the percentage interest of each such person or entity.

4. Affiant acknowledges that this Affidavit will be relied upon by Palm Beach County in its granting of a Concessionaire Service Agreement on the Premises.

5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

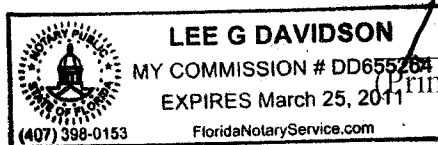
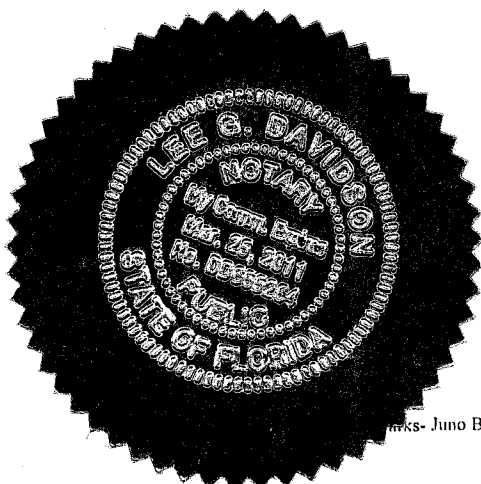
FURTHER AFFIANT SAYETH NAUGHT.

Thomas Zannucci, Affiant
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 12th day of October, 2007 by [Signature]

☒ who is personally known to me or ☐ who has produced _____ as identification and who did take an oath.

[Signature]
Notary Public



Lee G. Davidson
(Print Notary Name)

NOTARY PUBLIC
State of Florida at Large

My Commission Expires: 3/25/2011

ATTACHMENT #3

SCHEDULE TO BENEFICIAL
INTERESTS IN PREMISES

Name Thomas Zannucci Address 4320 SW Grove St Percentage of Interest 50%

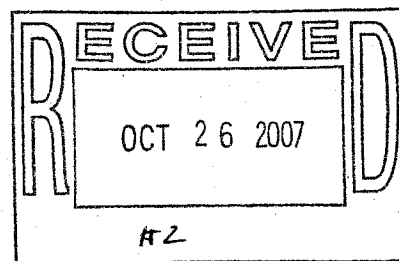
Concessionaire is only required to identify five percent (5%) or greater beneficial interest holders. If none, so state. Concessionaire must identify individual owners. If, by way of example, Concessionaire is wholly or partially owned by another entity, such as a corporation, Concessionaire must identify such other entity, its address and percentage interest, as well as such information for the individual owners of such other entity.

NAME

ADDRESS

DONALD V. STREETER, 2114 21st Ct. JUPITER FL 33477
Thomas Zannucci, 4320 SW Grove St Palmdale, CA 93499

RFP NO. 2007-102-TAS
Palm Beach County Board of Commissioner
Ted Simmons
Via fax 561- 233-0210
Request for proposal to provide
Concessionaire Services at
Juno Beach Park Fishing Pier



Dear Sirs,

To the selection for the above mentioned proposal I would appreciate to have the Commission consider the following:

- 1) Experience/Qualification: Strong emphasis on this criteria is given by also the accountable of the operation. The competitor provides since 2001 wrong profit & loss especially within the salary and sales. This also is a tax problem.
My experience is in bait & tackle for more than 3 years and for the operation of a pier one year with the third amount of business. The three years is only a strong preference but the most relevant experience and qualification.
- 2) Financial Plan: I hoped to have given the highest proposal for rent. This shall be given the highest points which gets 25 and the next proposal only should get 20 points. The competitor claims in the past \$ 50,000 payroll in total. He runs 3 piers each pier assuming a 24/7 runs 8,736 hours per pier, by three is 26,208 hours times minimum wage of \$ 6 is \$ 157,248 plus Social security of \$ 28,305, total of \$ 185,553 instead of \$50,000. This is a risk factor for any landlord much less a county.
- 3) Operational Plan/Business Plan: Here is again very doubtable the plan of the competitor as here also are to plan operating expenses and staffing level. The wrong amount of payroll and sales in the past cannot give any point to the competitor. At least this can not be a sound plan.
- 4) The items Sales/Rentals pricing: is as compared to the past much more detailed on my side then on the side of the competitor.
- 5) Financial ability: The financial statements of the competitor are wrong as the costs and sales are. The committee expressed that the financial ability of both competitor are equal. The rules give clear the highest financial statement 15 points, the other ones none.
- 6) SBE have none of the two competitors.

7) Local is only one, the competitor. I am only regional certified.

Resume:

- 1) I request be granted 25 points for my wide experience in management and for the huge success in Dania Beach and not given the highest points to the competitor.
- 2) The financial proposal should give me 25 points and the competitor 20 points
- 3) The business plan should give me 15 points and the competitor none
- 4) The item list should give me 10 points
- 5) Financial ability: this should give me 15 points, none for the competitor
- 6) No points for both
- 7) No points for me, but 5 points for the competitor.

That adds up to 90 points for me. If so granted I would appreciate to be the new concessionaire. If not in sole discretion of the committee I would like to have another chance in two years. Nevertheless the idea of the tables did not change the character of the fishing pier which is much wider than the pier of Dania Beach, but the life bait pump system in Dania is working now one week and this was paid and mainly installed by me personally, a must for a serious fishing pier in my opinion. It also brings the saltwater up for the fishermen's needs to keep the bait alive.

I appreciate very much having the chance to learn such a procedure and thank you very much for your consideration and time.

Sincerely



Sven H. Jutz



**Facilities Development &
Operations Department
Property & Real Estate
Management Division**

2633 Vista Parkway
West Palm Beach, FL 33411-5605
(561) 233-0200
FAX: (561) 233-0210
www.pbcgov.com/fdo

**Palm Beach County
Board of County
Commissioners**

Addie L. Greene, Chairperson

Jeff Koons, Vice Chair

Karen T. Marcus

Robert J. Kanjian

Mary McCarty


Burt Aaronson

Jess R. Santamaria

County Administrator

Robert Weisman

*"An Equal Opportunity
Affirmative Action Employer"*

 printed on recycled paper

November 29, 2007

Mr. Sven H. Jutz, President
Juno Pier Management, Inc.
Beach Watch Dania Bait & Tackle, Inc.
300 N Beach Road
Dania Beach, FL 33004

Re: RFP 2007-102-TAS – Juno Beach Park Pier Concession

Dear Mr. Jutz:

I am the Assistant Director of the Property and Real Estate Management Division, which issued the RFP. Your letter dated October 26, 2007, was forwarded to the members of the Selection Committee for the above-referenced RFP for their consideration. After consideration of your comments, the recommendations of the Selection Committee remain unchanged. The Selection Committee's recommendations will be presented to the Board of County Commissioners for their consideration.

In response to each of the items set forth in your letter, we offer the following:

1. Experience/Qualifications.

A. The RFP provides that "a strong preference will be given to a Proposer with a minimum of three (3) years experience of successfully operating a pier with a retail bait and tackle shop." Your proposal: (i) does not indicate that you have a minimum of three years experience in the operation of a bait and tackle shop and (ii) indicates that you have only one year of experience in the operation of a pier. The Selection Committee awarded a greater amount of points to the other respondent since you did not have the requisite experience in either the operation of a pier or the operation of a retail bait and tackle shop while the other respondent satisfied both minimum requirements to receive a strong preference.

ATTACHMENT # 5

Mr. Sven H. Jutz, President

November 29, 2007

Page 2

B. Your claims that the other respondent provides "wrong profit & loss especially within the salary and sales." are not relevant to the Experience/Qualification Selection Criteria.

2. Financial Plan.

A. The RFP set a minimum annual rental amount of \$39,600 and provides that "a maximum of 25 points shall be assigned to this category with the most points be given to the proposal which indicated the largest rental income to the County." Furthermore, the highest amount of proposed rent shall receive the maximum 25 points and each other proposal shall have five scoring points deducted in ranked order from highest to lowest amount proposed. You offered an annual rental amount of \$43,200 and the other respondent offered an annual rental amount of \$45,000. Therefore, the Selection Committee awarded the other respondent the maximum of 25 points and awarded you 20 points for this category.

B. Your claims and calculations regarding the other respondent's financial plan and the County's risk factors in accepting the other respondent's proposal are not relevant to the Financial Proposal Selection Criteria.

3. Operational Plan/Business Plan.

A. The RFP provides that "a maximum of 15 points shall be assigned to this category with the most points being given to the proposal that exhibits the most sound operational/business plan as determined by the Selection Committee." Both respondents presented acceptable operational plans. Two of the Selection Committee members awarded both respondents 15 points each and the third Selection Committee member rated your proposal 5 points lower than the other respondent.

B. Your claims regarding the soundness of the other respondent's operational plan and that the other respondent provided "the wrong amount of payroll and sales in the past" are not relevant to the Operation Plan/Business Plan Selection Criteria.

4. Item Sales/Rentals Pricing.

The RFP provides that "a maximum of 10 points shall be assigned to this category." Both respondents presented acceptable pricing plans and an acceptable variety of goods to be rented/sold. All members of the Selection Committee awarded 10 points to each of the respondents.

5. Financial Ability.

A. The RFP provides that "a maximum of 15 points shall be assigned to this category with the most points being given to the proposal which indicates the greatest financial ability as determined by the Selection Committee." You state that "the rules give clear the highest financial statement 15 points, the other ones none." The rule only provides that the most points be given to the proposal which indicates the greatest financial ability; it does not provide that only one respondent shall receive all the points in this category while the other receives none. Both respondents presented acceptable documents to substantiate their financial ability and all of the members of the Selection Committee awarded 10 points to each of the respondents.

B. You claim that the other respondent's "financial statements..." are wrong. The financial statements submitted by the other respondent have been determined to meet the requirements of the Selection Criteria.

6. SBE.

The RFP provides that "a maximum of 5 points shall be assigned to certified Palm Beach County SBEs. Neither your proposal nor the other respondent's proposal meets the requirements of this category and therefore no points were awarded to either respondent.

7. Local Preference.

The RFP provides that "a maximum of 5 points shall be assigned to demonstrated local businesses." Your proposal indicates that you are a "regional business" with a permanent place of business in Broward County. The other respondent indicated that it is a "local business" with a permanent place of business in Palm Beach County. Therefore, the Selection Committee did not award you any points in this category as you did not meet the requirement of being a demonstrated local business and the Selection Committee awarded 5 points to the other respondent as it met the requirement of being a demonstrated local business.

Mr. Sven H. Jutz, President
November 29, 2007
Page 4

In summary, the Selection Committee is recommending that the RFP be awarded by the Board of County Commissioners to the other respondent, Dania Pier Management, Corp. for the following reasons: (i) Dania Pier has a minimum of 3 years experience in the operation of both a pier and a bait and tackle shop, (ii) Dania Pier proposed the higher amount of rent, (iii) Dania Pier correctly received points for being a demonstrated local business, and (iv) Dania Pier was deemed the preferred proposal of the Selection Committee.

A copy of your letter and this response will be included in the agenda package which will be considered by the Board at its December 18, 2007 meeting.

Once the Board makes a final determination of the awardee, we will return the deposit of the non-awardee, via certified return receipt US Mail. We thank you for preparing and submitting a response to the RFP. If the Board does not select you as the awardee of the Concessionaire Services Agreement, then as requested in your letter, if in the future another RFP for a vendor at the Juno Beach Pier is issued we will, as a courtesy, attempt to contact you.

Sincerely,



Samara J. Cooper,
Assistant Director

SJC/bw

cc: Ross C. Hering, Director, PREM
Richard C. Bogatin, Manager, Property Management, PREM
Ted Simmons, Property Specialist, PREM
Dave Lill, Director Aquatics Division, PBC Parks and Recreation (Fax 966-7070)
Michael Thomas, Revenue Manager, Parks and Recreation (Fax 963-6784)
Don C. May, Ocean Rescue Chief, Parks and Recreation (Fax 624-0064)
PREM Project No. 2007-5.018

G:\Property Mgmt Section\In Lease\Parks- Juno Beach Pier Concession\RFP\Jutz response ltr.doc